

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WYETH,)
)
)
Plaintiff,)
) Civil Action No.: 06-222 JJF
v.)
)
IMPAX LABORATORIES, INC.,)
)
Defendant.)
_____)

**DEFENDANT'S MOTION TO COMPEL
A RESPONSE TO INTERROGATORY NO. 35**

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Attorneys for Defendant IMPAX LABORATORIES, Inc.

February 6, 2007


Defendant Impax Laboratories, Inc. ("Impax") hereby moves the Court for an order compelling Plaintiff Wyeth ("Wyeth") to respond to Impax's Interrogatory No. 35. This Interrogatory states as follows:

To the extent WYETH contends that, during the prosecution of the PATENTS IN SUIT, WYETH or the NAMED INVENTORS were not aware of ALZA'S development of an EXTENDED RELEASE FORMULATION comprising VENLAFAXINE beyond the disclosure in publication WO 94/27589, that the information known about ALZA's development was not material to patentability, and/or that information known about ALZA's development was not withheld from the PTO with the intent to deceive, IDENTIFY all factual and legal bases for such contentions, including all PERSONS who have knowledge of such bases, what knowledge each PERSON has, and all DOCUMENTS that evidence such bases, for WYETH'S contention.

Wyeth refuses to respond to this Interrogatory under a claim that it is not relevant to this lawsuit. Impax brings this motion to compel on the grounds that the Interrogatory is relevant to Impax's defenses and counterclaims that the patents-in-suit are invalid and unenforceable, as explained in Impax's Brief in support of this Motion, submitted herewith.

This Motion is based on the Notice of Motion, filed herewith, the Brief, filed herewith, the Declaration of Mary B. Matterer, filed herewith, any argument of counsel the Court may hear on this Motion on March 2, 2007 or at any other time, and the papers on file in this case.

Dated: February 6, 2007




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RULE 7.1.1 CERTIFICATION

The undersigned certifies that counsel for plaintiff Wyeth has been contacted and the parties have been unable to resolve the issues presented in this Motion.



Mary B. Matterer (#2696)

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Defendant.)	
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ORDER

This ____ day of _____, 2007, the Court having considered Defendant Impax's Motion to Compel a Response to Interrogatory Number 35;

IT IS HEREBY ORDERED that Impax's Motion to Compel a Response to Interrogatory Number 35 is granted. Plaintiff shall provide a complete response to Interrogatory Number 35 within ten (10) days of the entry of this Order.

Joseph J. Farnan, Jr., J.